

UNITED STATES OF AMERICA  
MERIT SYSTEMS PROTECTION BOARD

\_\_\_\_\_  
ROGER BRIDGES

v.

OFFICE OF PERSONNEL MANAGEMENT)  
(CSA 2 549 462)  
\_\_\_\_\_

)  
)  
)  
) DOCKET NUMBER  
) AT831L8310317  
)  
)

OPINION AND ORDER

Roger Bridges (appellant) appealed the reconsideration decision of the Office of Personnel Management (OPM) which denied his application for disability retirement. Appellant's appeal was denied in an initial decision issued by a presiding official of the Board's Atlanta Regional Office. A timely petition for review was filed by appellant.

Appellant alleges as the basis for his application for disability retirement job-related stress resulting in dizziness, high blood pressure, severe stomach pain with hyperventilation, and gastroenteritis. Appellant argued that his physical condition prevented him from carrying out his duties as a Special Agent, Criminal Investigator, with the Bureau of Alcohol, Tobacco and Firearms, (BATF) Department of the Treasury. In support of his application, appellant submitted statements from his treating physician, a consulting psychiatrist, his supervisor, and a co-worker. In support of his petition for review, appellant has

submitted an additional statement from the psychiatrist, dated October 7, 1983, which appellant contends is new and material evidence which was previously unavailable.<sup>1/</sup>

The Board has held, in Chavez v. Office of Personnel Management, 6 MSPB 343 (1981), that it is the employee who bears the burden of persuasion by a preponderance of the evidence in an appeal before the Board from an OPM decision on a voluntarily initiated application for disability retirement. Id. at 353. Further, the Board held that the ultimate determination is to be based upon the probative value of all the evidence, taking into account: (1) objective clinical findings; (2) diagnoses and expert medical opinions; and (3) subjective evidence of pain and disability together with (4) all evidence relating to the effect of the appellant's condition upon his or her ability to perform in the grade or class of position last occupied. Id. at 358.

In the initial decision, the presiding official determined that the appellant had failed to establish that his problems were of disabling severity. Initial Decision (I.D.) at 3. The presiding official further noted and emphasized that appellant failed to show that his condition

---

<sup>1/</sup> Appellant requested that the presiding official delay in deciding this case until the psychiatrist's report of October 7, 1983, could be considered. The presiding official issued his decision before the request for delay was received. The appellant eventually filed the psychiatrist's report on October 13, 1983, accompanied by a Motion for the Board to Receive New Evidence. The psychiatrist had apparently requested sufficient time to prepare a comprehensive report, and to evaluate the effect of possible medications on appellant. Having shown good cause for the delay in presenting the psychiatrist's report, appellant's motion is GRANTED.

was the result of a psychiatric disease or illness. Id. He concluded that appellant had not established that he was totally disabled for useful and efficient service in the position of Special Agent. Id. at 4. 2/

Appellant presented evidence, uncontested by OPM, as to how his mental and physical condition affected his ability to perform the duties required in his position. He suffered serious gastrointestinal pain, and a coworker reported an incident where appellant, while on duty, doubled over in pain, was gasping for breath, and had to be rushed to his doctor.3/ His treating physician noted that appellant had periods where he just broke down and began crying, suffered from hyperventilation, high blood pressure, and rashes.

In his report, the treating psychiatrist has noted that appellant is suffering from a chronic traumatic stress disorder with secondary psychophysiological concomitants which affect the cardiovascular and gastrointestinal systems. Appellant's supervisor noted that on numerous occasions, appellant was unable to participate in arrests of suspects, surveillances, and criminal investigations because of severe

---

2/ The presiding official relied on Chavez, supra, as requiring a showing of "total" disability to qualify for disability retirement. See I.D. at 4. By an amendment to the retirement law enacted after Chavez was issued, Congress altered the definition of disability, and removed the requirement of showing "total" inability to provide useful and efficient service in one's position to qualify for disability. The applicable definition of disability found at 5 U.S.C. § 8337 (a) requires a showing of an inability to provide useful and efficient service in one's position, and such inability must be established by a preponderance of the evidence.

3/ See statement of Peter B. Mastin, dated June 11, 1982.

stomach pain and dizziness, and exhibited an inability to handle the pressures of his position.<sup>4/</sup>

In response to the evidence submitted by appellant, OPM did not conduct any medical or psychiatric examination. There is no evidence in the record to disprove or even counter the validity of appellant's evidence concerning his physical symptomatology or its effect on his ability to perform his duties. While not automatically establishing that appellant has met his burden under Chavez, supra, the failure of OPM to present evidence to counter that of appellant is a factor for consideration. See Sullivan v. Office of Personnel Management, 6 MSPB 636, 637 (1981).

We find that the appellant has established that he is unable, due to his psychological and physical condition, to perform useful and efficient service in his position. In finding that appellant had failed to establish that he was suffering from a specific disease or injury, and thus was not qualified for disability retirement, the presiding official placed too much emphasis on the need to find an objective medical basis for a disabling condition. As noted in Chavez, supra, objective clinical findings are only one of several factors to be considered. The failure of an appellant to establish the precise cause of his or her medical condition does not necessarily render a disability claim less credible. See Meighen v. Office of Personnel Management, 7 MSPB 82, 84 (1981). Appellant has established that his condition is such that it prevents him from doing

---

<sup>4/</sup> The need for a criminal investigator to be mentally stable is a factor which may be properly considered in evaluating qualification for disability retirement. Cf. Bauer v. Department of the Treasury, MSPB Docket No. SF07528110007 at 3-4 (August 12, 1982).

the duties necessary in his job, and that he is thus unable to provide useful and efficient service in his position. See Turner v. Office of Personnel Management, MSPB Docket No. AT831L8110243 (August 19, 1983).

Appellant's petition for review is GRANTED, and the initial decision is REVERSED. OPM is hereby ORDERED to grant appellant's application for disability retirement. Proof of compliance with this Order shall be submitted by the agency to the Office of the Secretary of the Board within twenty (20) days of the date of issuance of this opinion. Any petition for enforcement of this Order shall be made to the Atlanta Regional Office in accordance with 5 C.F.R. § 1201.81(a).

This is the final order of the Merit Systems Protection Board in this appeal. 5 C.F.R. § 1201.113(c).

The U.S. Court of Appeals for the Federal Circuit has held that the Board's final decision in an appeal from a denial of an employee-initiated application for disability retirement benefits is not subject to judicial review under 5 U.S.C. § 7703. Lindahl v. OPM, 718 F.2d 391 (Fed. Cir. 1983).

FOR THE BOARD:

JUL 9 1984

\_\_\_\_\_  
(Date)

Washington, D.C.

Paula A. Latshaw

PAULA A. LATSHAW  
ACTING SECRETARY